

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELLIOT MCGUCKEN,

Plaintiff,

-against-

SHUTTERSTOCK, INC.,

Defendant.

Case No. 1:22-cv-00905 (GHW)

DECLARATION OF ELEANOR M. LACKMAN

ELEANOR M. LACKMAN declares as follows:

1. I am a Partner at the law firm of Mitchell Silberberg & Knupp LLP, counsel for defendant Shutterstock, Inc. (“Shutterstock”). I submit this declaration in support of Shutterstock’s Motion for Summary Judgment.

2. Attached hereto as **Exhibit A** is a true and correct copy of relevant excerpts from Shutterstock’s Objections and Answers to Plaintiff Elliot McGucken’s (“Plaintiff”) Second Set of Interrogatories, including, in particular, Shutterstock’s Answers to Interrogatory Nos. 11, 13, 16-17, 20.

3. Attached hereto as **Exhibit B** is a true and correct copy of the relevant excerpts from Shutterstock’s Objections and Answers to Plaintiff’s First Set of Requests for Admission, including, in particular, Shutterstock’s Answers to Request for Admission Nos. 1, 9, 19, 30.

4. Attached hereto as **Exhibit C** is a true and correct copy of a document filed in *Steinmetz v. Shutterstock, Inc.*, Case No. 1:21-cv-07100-AKH, Dkt. No. 55-1 (S.D.N.Y. Sept. 2, 2022), which contains an excerpt from the transcript of the deposition of the plaintiff in that case, who is a professional photographer.

5. Attached hereto as **Exhibit D** is a true and correct copy of a document produced by Plaintiff Bates-numbered MCG004380-81, and marked at Plaintiff's deposition as Exhibit 41, which contains emails between Shutterstock and counsel for Plaintiff dated December 30, 2020 and January 4, 2021.

6. Attached hereto as **Exhibit E** is a true and correct copy of a document produced by Plaintiff Bates-numbered MCG004378-79, and marked at Plaintiff's deposition as Exhibit 19, which contains emails between Shutterstock and counsel for Plaintiff dated January 15, 2021 and January 19, 2021.

7. Attached hereto as **Exhibit F** is a true and correct copy of a document produced by Plaintiff Bates-numbered MCG004374-77, and marked at Plaintiff's deposition as Exhibit 18, which contains a copy of Plaintiff's takedown notice to Shutterstock regarding a single image.

8. Attached hereto as **Exhibit G** is a true and correct copy of Shutterstock's Supplemental Objections and Answers to Plaintiff's Interrogatory No. 14.

9. Attached hereto as **Exhibit H** is a true and correct copy of relevant excerpts from the transcript of the deposition of Plaintiff taken on September 28, 2022.¹

10. Attached hereto as **Exhibit I** is a true and correct copy of Plaintiff's Supplemental Responses to Defendant's First Set of Requests for Admission, dated September 13, 2022.

11. Attached hereto as **Exhibit J** is a true and correct copy of a document produced by Plaintiff Bates-numbered MCG00001-2, which contains a copy of the certificate of Copyright

¹ The transcript excerpts attached hereto **Exhibit H** are redacted and/or filed under seal pursuant to Plaintiff's request. Shutterstock has contemporaneously filed a letter motion to redact and/or seal this document, and filed an unredacted copy under seal with the proposed redactions highlighted.

Registration No. VA0002089199. This registration purportedly covers “Approximately 14,266 Photos,” including 44 of the images at issue in this case (collectively, the “Images”).

12. Attached hereto as **Exhibit K** is a true and correct copy of a document produced by Plaintiff Bates-numbered MCG00003-4, which contains a copy of the certificate of Copyright Registration No. VA0002089207. This registration purportedly covers “Approximately 14,842 Photos,” including one of the Images at issue.

13. Attached hereto as **Exhibit L** is a true and correct copy of a document produced by Plaintiff Bates-numbered MCG00005-6, which contains a copy of the certificate of Copyright Registration No. VA0002089215. This registration purportedly covers “Approximately 14,266 Photos,” including two of the Images at issue.

14. Plaintiff has produced copies of the lists of photographs that he submitted to the Copyright Office along with his applications for the foregoing registrations.² The lists purport to identify each photograph covered by the registrations. The Images at issue are not included among the first 750 images identified in the lists.


15. Attached hereto as **Exhibit M** is a true and correct copy of a document produced in response to a third-party subpoena by SmugMug, Inc. d/b/a Flickr and Bates-numbered SMUGMUG_00001, which contains a screenshot of a webpage on Flickr’s website entitled “Your account / Who can download your images (including originals)?”

16. Attached hereto as **Exhibit N** is a true and correct docket report showing numerous cases involving Plaintiff, which was marked at Plaintiff’s deposition as Exhibit 4.

² The lists of photographs are Bates-numbered MCG003841, MCG003842, and MCG003843. Each list is more than 800 pages in PDF form. Due to their size, Shutterstock has not attached copies of these lists, but will make them available to the Court upon request.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: Los Angeles, California
January 20, 2023



Eleanor M. Lackman